

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Gary Vannatter, Sr.,)	C/A No. 6:11-235-JFA-KFM
)	
Petitioner,)	
)	
vs.)	ORDER
)	
Warden Robert M. Stevenson, III,)	
)	
Respondent.)	
_____)	

The *pro se* petitioner, Gary Vannatter, brings this action pursuant to 28 U.S.C. § 2254 challenging his state court conviction and life sentence for murder. Specifically, he asks this court to vacate “all post-trial state and federal court judgments” and issue an order directing the respondent to provide him with a new post-conviction relief (PCR) action.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he opines that the petition is successive and the petitioner has not received permission from the Fourth Circuit Court of Appeals to file a successive § 2254 petition. The Magistrate Judge recommends dismissal of the action without prejudice. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

¹ The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

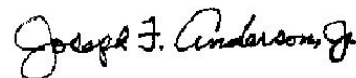
The petitioner was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on February 17, 2011. Petitioner filed timely objections wherein he contends that despite this being his second § 2254 habeas action filed in this court which relates to the same underlying conviction and sentence, it is not successive. He seeks a new “PCR” rather than a new trial. He also contends that he is exempt from the requirement that he must seek pre-authorization from the Fourth Circuit Court of Appeals. Finding no merit in the petitioner’s objections, they are overruled.

As the petitioner has not received permission from the Fourth Circuit to file a successive petition, this court is without authority to hear the § 2254 petition. 28 U.S.C. § 2244 and *United States v. Winestock*, 340 F.3d 200, 205 (4th Cir. 2003) (“In the absence of pre-filing authorization, the district court lacks jurisdiction to consider an application containing abusive or repetitive claims.”)

After a careful review of the record, the applicable law, the Report and Recommendation, and the petitioner’s objections thereto, the court finds the Magistrate Judge’s recommendation proper and incorporated herein by reference. Accordingly, this action is dismissed without prejudice as a successive § 2254 petition and without issuance and service of process.

IT IS SO ORDERED.

March 24, 2011
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge